IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.87 OF 2003

Shri Damodar Baburao Jagtap,
since deceased through his heirs,
Smt Shantabai Damodar Jagtap and ors Appellants.

Vs

Shri Dattatraya Baburao Jagtap,
since deceased through his
heirs, Smt Parvatibai Dattatraya
Jagtap and ors. Respondents.

Mr V.G.Mujumdar, for the appellants.
Mrs Shakuntala A Mudbidri, for respondent no.1D.

CORAM : D.B.BHOSALE, J.
DATED : 6th August, 2007.

P.C.:

1. This appeal, by the defendants, is directed against the concurrent findings of facts recorded by the courts below in a suit filed by the original plaintiff Dattatraya Baburao Jagtap. By the impugned judgments, the suit for injunction and possession on title has been decreed.

2. The only contention advanced by Mr Mujumdar, learned counsel for the defendants, is that during pendency of the first appeal the original plaintiff died and the defendants had filed an application for bringing his heirs on record and for setting aside the abatement. The appellate court, before passing

any order on the said application, dismissed the appeal on merits and in view thereof he submits that the judgment against a dead person is nullity and hence deserves to be set aside. Mr Mujumdar, did not make any other submission. Ms Mudbidri, learned counsel for the respondents, the heirs of original plaintiff, submitted that after the application for brining the heirs on record was filed by the defendants before the first appellate court, the summons were issued to the heirs and accordingly the heirs had entered appearance through Advocate D.N.Bhagat. He represented the heirs before the first appellate court. The defendants and their advocates did not make any grievance before the appellate court nor did they insist for passing an order on the application for bringing heirs on record. This statement of Ms Mudbidri is not disputed by Mr Mujumdar.

3. I have heard the learned counsel for the parties and perused the impugned judgments and the other material placed before me. The record reveals that the Advocate for the heirs was heard by the appellate court on merits. The heirs have not made any grievance against the judgment passed by the appellate court. In this appeal they are represented by Ms Mudbidri. Both the courts below, after having

taken the entire evidence on record, have recorded a categoric finding that the respondent-plaintiff is the owner of the suit property and is in possession thereof and on the basis thereof have granted injunction against the defendants. No prejudice whatsoever has been caused to the defendants. The substantial justice has been done. Hence, I find absolutely no reason to interfere with the finding of fact recorded by the courts below. No substantial question of law is raised in this appeal. Accordingly, the Second Appeal is dismissed.

(D.B.Bhosale,J.)